SUPREME COURT, U. S.

DEC 16 1966

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 871

MICHAELA GRAND, DANIEL POLLOCK and JAMES PEAKE, JR.,
Petitioners,

vs.

WILLIAM BOEGER, Warden, St. Louis City Jail,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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To the United States Court of Appeals for the Eighth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled cause July 6, 1966, infra, p. 15, rehearing denied August 16, 1966, infra, p. 32.

CITATIONS TO OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 362 Fed. 2d 999 (1966), and is printed in the appendix hereto, infra, p. 15. The opinion of the United States District Court for the

Eastern District of Missouri is reported at 340 F. Supp. 475. The decision of the Supreme Court of Missouri is unreported, but is printed in the appendix hereto, infra, p. 35. The opinion of the St. Louis Court of Appeals of the State of Missouri is reported at 374 S. W. 2d 557 (1964).

JURISDICTION.

The judgment of the United States Court of Appeals was entered July 6, 1966, infra, p. 15. Motion for rehearing was denied by the Eighth Circuit, August 16, 1966, infra, p. 32. Petitioner's time for filing petition for writ of certiorari was extended to and including December 16, 1966, by an order signed by Mr. Justice White on November 12, 1966.

The jurisdiction of this Court is invoked under 28 U. S. C., § 1254 (1), petitioners having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

QUESTIONS PRESENTED.

1. Whether petitioners were denied fundamental federally guaranteed constitutional rights when they were convicted of criminal contempt for violating an injunction to which they were not parties, privies or members of the class enjoined?

2. Whether petitioners were fairly tried and convicted of wrongfully acting in collusion with parties to the injunction proceeding when they were not charged with collusion nor was any substantial evidence of collusion presented to the court?

3. Whether petitioners' rights under the First Amendment were infringed and whether State jurisdiction was preempted because of a labor dispute involving unfair

labor practices and whether sentences imposed without jury trial were constitutionally permissible. All of which are fully set out in companion case of Curtis et al. v. Boeger, and incorporated herein by this reference.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

TRANSCRIPT REFERENCES.

The transcript references are as follows: (Tr. C) refers to transcript in state trial of Curtis et al; (Tr. G) refers to transcript in state trial of Grand et al. These cases were combined in the U. S. Court of Appeals but separate petitions for writ of certiorari have been filed.

STATEMENT OF THE CASE.

A. **General Background.** These cases involve judgments of contempt adjudicated against petitioners by the Circuit Court of the City of St. Louis, State of Missouri, arising out of a protest demonstration against the diseriminatory employment policies of the Jefferson Bank and Trust Company contrary to an *ex parte* injunction issued against certain individuals and the St. Louis Committee of Racial Equality. The Court in the *ex parte* injunction ordered certain defendants individually and as representatives of a class known as the St. Louis Committee of Racial Equality (CORE) from "physically hindering, obtructing, interfering with" other persons desiring to enter plaintiff's bank and from "congregating or loitering individually or in groups inside plaintiff's banking premises" and engaging in any acts which "interferes with, intimidates, harasses, hinders and annoys plaintiff's employees," etc.

Petitioners in this cause were not named as defendants nor were they members of the class enjoined by the order of the Court.

The St. Louis Committee of Racial Equality, commonly referred to as CORE, is a branch of the national organization known as the Congress of Racial Equality. In 1961 St. Louis CORE set up a special committee for the purpose of negotiating with banks in the City of St. Louis. During the period from 1961 to August, 1963 no progress had been made at the Jefferson Bank and on August 14, 1963, St. Louis CORE sent a letter to the Bank asking the bank to hire four Negroes in teller or clerical positions within two weeks (Tr. C, 10, 11). The bank replied with a written communication denying the request (Tr. C, 17, 18). On Sunday, August 25, 1963, the CORE group voted to take direct action against the bank on Friday, August 30, 1963 (Tr. C, 663).

On Thursday, August 29th, the Jefferson Bank filed its petition for an injunction in the Circuit Court of the City of St. Louis and applied for a temporary restraining order against certain named individuals and St. Louis CORE. On Friday, August 30, 1963 at 1:55 p. m. the St. Louis Circuit Court issued an *ex parte* injunction. That same afternoon St. Louis CORE held the demonstration at the bank and eight of the individually named defendants and their attorney were subsequently charged with violating the court order and convicted of contempt. Their trial began September 3, 1963 and concluded on Thursday, October 3rd. The defendants in that proceeding were directed to appear before the Court on October 25th for the decision and judgment of the Court.

On Friday, October 4, 1963, at about 5:00 p. m. some fifteen persons participated in a demonstration at the Jefferson Bank and Trust Company and were arrested on charges of trespassing and peace disturbance and subse-

quently charged with violation of the injunction issued by the Court. Their trial began at 8:30 p. m. on Friday, October 4 or 10:00 a. m. Monday, October 7. These were the petitioners in the case of Ford et al.

B. Matters leading to charges of violation of the ex parte restraining order against these appellants.

On Monday, October 7, the plaintiff bank made elaborate preparations and plans for handling demonstrations. Such plans consisted in part of stationing bank employees at each door of the bank to admit only selected persons (Tr. G, 143, 144), and of setting up a special facility at teller's window 10 for making change at a service charge of twenty-five cents per transaction (Tr. G, 69, 70, 93, 94).

Petitioners in Grand, et al., were admitted to the bank on the afternoon of October 7, 1963, by the bank employees or guards posted at the doors (Tr. G. 200). Petitioner Grand went to the change window and after she had been there for a short time she was asked to leave by a police officer and when she failed to do so was placed under arrest (Tr. G. 23, 24, 25). Petitioner Pollock went to the change window and was arrested when he refused to leave (Tr. G. 177, 178, 179). Petitioner Peake was first denied admission to the bank (Tr. G. 223), and then was admitted (Tr. G. 224). Peake then went to the change window, made some change, and went outside the bank (Tr. G. 186, 187). Peake later returned to the bank and was arrested after he had been interviewed by some reporters. During the testimony of Mr. Dillon Ross, President of the bank, the following appears in the transcript (Tr. G. 111, 112):

> Miss Younge: Was James Peake, at the time you were talking to him and at the time that you asked that he be arrested, doing anything but sitting in the bank in the middle of the lobby in his wheelchair?

A. Was he doing anything?

Q. Was he doing anything?

Q. Else, yes.

A. Well, I testified that——

Q. Sir, would you answer the question?

A. He was sitting in his wheel chair, yes.

Q. And was he—the question is whether he was doing anything else besides sitting in his wheel chair in the center of the lobby of the bank?

The Court: At what time?

Miss Younge: At the time you asked him to be arrested.

A. No, he was doing nothing else.

Q. And prior thereto, had he just come into the bank for the second time?

A. Yes. I testified he came into the bank the second time.

Q. And when he was wheeled into the center of the lobby, it was at this time that an arrest ensued?

A. Correct.

Q. He was not at that time blocking the doors of the bank, was he?

A. No.

Q. He was not at that time sitting on the floor of the bank, was he?

A. No.

Q. He was not at that time singing?

A. No.

Q. He was not chanting?

A. No.

Q. He was not at that time blocking any tellers' windows?

A. No.

All petitioners were charged with peace disturbance and trespass and while they were in the custody of the police, the bank attorneys filed a motion for the issu-

ance of an attachment against the petitioners which was granted by the Court (Tr. G. 1, 2, 3). The petitioners were brought before the Court and the Court read notice of the charges against them (Tr. G. 8, 9, 10).

The notice did not contain any charge that petitioners were acting in concert with and aiding or abetting one or more of the defendants named in the original injunction suit. Petitioners entered a plea of not guilty and were admitted to bail and trial was set for October 10, and then continued to October 14. The trial was concluded October 16, and petitioners were directed to return on October 25 to receive the decision and judgment of the Court (Tr. G. 383). On October 25 the Court entered similar findings as to each petitioner and in said findings of fact and judgment found that petitioners, "with actual notice as aforesaid, and **acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Company v. Robert Curtis, et al.**, did wilfully disobey and violate said Restraining Order by: . . ." (emphasis ours) (Tr. G. 397, 407, 417).

James Peake, the paraplegic, was sentenced to one year in the city jail and fined $500. Danny Pollock was sentenced to 60 days in the city jail and fined $500, and Michaela Grand was sentenced to 120 days in the city jail and fined $500.

C. How the Federal Questions Were Raised and Decided Below.

After the sentences and fines were imposed the petitioners were committed to the City Jail and denied bond pending appeal on the grounds that no appeal lies from a conviction of criminal contempt. On October 29, a Writ of Habeas Corpus was filed with the St. Louis Court of Appeals on behalf of these petitioners and on November 1, they were admitted to bail. The St. Louis Court of

Appeals combined the cases of Curtis, et al., Ford, et al., and Grand, et al., and on January 15, 1964, issued its order discharging some alleged contemnors in the case of Curtis, et al., and quashed the writs as to these petitioners. Curtis v. Tozer, 374 S. W. 2d 557.

Petitioners then filed an application for writ of habeas corpus in the Supreme Court of Missouri which was denied by said Court without a hearing and in an unreported memorandum decision (appendix, infra, p. 35). Subsequently, an application for writ of habeas corpus was filed in the United States District Court of Missouri, Eastern Division. Thereafter, the District Court denied the writs on the grounds that petitioners had not exhausted all state remedies. Petitioners appealed to the Eighth Circuit Court of Appeals and the Eighth Circuit determined that appellants had exhausted their state remedies and ordered the District Court to consider whether the issues sought to be raised required an evidentiary hearing. Petitioners were admitted to bail pending judgment on the applications for writ of habeas corpus. The District Court determined that an evidentiary hearing was not necessary and denied the writs. Grand v. Boeger, 340 F. Supp. 475. An appeal was perfected to the Eighth Circuit Court of Appeals. On July 6, 1966, the Eighth Circuit denied the applications for writ of habeas corpus and motion for rehearing was denied on August 16, 1966. Petitioners' time for filing petition for writ of certiorari was extended to and including December 16, 1966, by order of Mr. Justice White entered November 12, 1966.

Petitioners presented and preserved among other points, the following 14th Amendment due process issues and questions at each level of the proceedings in both state and federal courts:

a. Contention that petitioners were not within the class restrained.

b. Contention that petitioners were not charged with knowingly and wrongfully acting in collusion with those restrained, and that there was no evidence to support such a finding.

The Eighth Circuit Court of Appeals held, "The issue of whether some of the defendants were within the class of those restrained or whether they were guilty by reason of wrongfully and knowingly acting in collusion with those restrained was fairly tried and determined . . . no fundamental federally guaranteed constitutional rights were denied petitioners." Grand, et al., v. Boeger, 362 Fed. 2d 999, appendix, infra, p. 18.

The Federal District Court held that these issues did not rise to the stature of federally protected rights and the St. Louis Court of Appeals determined that there was sufficient evidence that petitioners had notice of the injunction and that a person who has notice of an injunction can be held in contempt if he violates the injunction.

REASONS FOR GRANTING THE WRIT.

I.

Certiorari Should Be Granted to Review the Holding That Petitioners Were Not Denied Any Fundamental Federally Guaranteed Constitutional Rights When They Were Convicted of Violating an Injunction to Which They Were Not Parties, Privies or Members of the Class Enjoined.

A person must be a party or in privity with a party in order to be bound by an injunction or any other judgment in personam.

On October 25, 1963, the Circuit Court of the City of St. Louis found these petitioners guilty of criminal contempt of court for violating an ex parte injunction issued

on August 30, 1963, against Robert B. Curtis, William L. Clay, Charles R. Oldham, Lucien Richards, Richard Daly, Walter Hayes, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality (Tr. G. 397-417). These petitioners were neither parties to the injunction suit or members of St. Louis CORE. It was never alleged nor did the Court make a finding of fact that these petitioners were members of CORE or parties to the restraining order.

Courts have no power to affect the legal relationships of persons not parties to an action or in privity with parties and a decree issued against one over whom the court lacks jurisdiction is of no effect. Harris v. Hardeman, 14 Howard 334, Hansberry v. Lee, 61 S. Ct. 115. It is apparent that petitioners were not bound by the injunction issued by the St. Louis Circuit Court because they were not parties to the decree.

A judgment of a state court if obtained without due process over defendants in personam may be collaterally attacked either defensively or agressively. Essanay Film Mfg. Co. v. Kone, 42 S. Ct. 318, Kilbourn v. Thompson, 103 U. S. 168, Hansberry v. Lee, supra. Therefore a judgment affecting individual rights is always open to inquiry where the judgment is relied on in any other proceeding. This doctrine applied to injunctions and contempts of court based on violation of an injunction. Judge Learned Hand for the court in Alemite Mfg. Corp. v. Staff, 42 F. 2d 832, voided a judgment wherein a stranger was convicted of contempt for violating an injunction to which he was not a party. The Court said at page 833:

> "On the other hand no Court can make a decree which will bind anyone but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large no matter how broadly it words its decree."

An injunction may not be enforced in state or federal courts against those who are not parties thereto. Scott v. Donald, 165 U. S. 107. Regal Knitwear Co. v. NLRB, 65 S. Ct. 478. In the Regal Knitwear case the court said at page 481:

> "The courts nevertheless may not grant enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law."

Petitioners in this case were not parties to the injunction nor members of CORE and therefore were not bound by the injunction issued in Jefferson Bank and Trust Company v. Curtis et al. If these petitioners are to be held at guilty of contempt of court it must be on some theory other than that they were bound by the injunction and violated it.

II.

Certiorari Should Be Granted to Review the Holding That Petitioners Were Fairly Tried and Convicted of Wrongfully Acting in Collusion With Parties to the Injunction Proceeding When They Were Not Charged With Collusion Nor Was Any Substantial Evidence of Collusion Presented to the Court.

Petitioners contend that they were denied due process when they were convicted of criminal contempt based on a finding that they "acted in concert and participation with, and aided and abetted one or more defendants" when they were never charged with acting in concert and participating with, and aiding and abetting one or more of the defendants in the injunction suit and no substantial evidence was adduced to support such a finding.

There was no evidence introduced into court that petitioners were members of the class restrained and they

obviously were not named as defendants. Petitioners testified that they were not members of CORE.

It is a generally accepted rule of law that a stranger or a person not bound by an injunction may be convicted of contempt of court if he aids or acts in concert with one who is bound by the injunction. Ex parte Lennon, 166 U. S. 548; United Pharmacal Corp. v. United States, 306 F. 2d 515; Alemite Mfg. Corp. v. Staff, supra. In United Pharmacal Corp. v. United States the court said at pages 517, 518:

> "The question is whether United and its officers aided and abetted Melabolic in violating the preliminary injunction for as the late Judge Learned Hand pointed out in Alemite Mfg. Corp. v. Staff, 42 F. 2d 832 (C. A. 2, 1930), 'the only occasions when a person not a party may be punished is when he has helped to bring about not merely what the decree has forbidden, because it may have gone too far, but that it has the power to forbid, an act of a party. This means that the respondent must either abet the defendant (i. e., the person enjoined) or must be legally identified with him.' Wherefore as Judge Hand went on to point out, if the person enjoined is not involved in the contempt, an employee, and by the same token one in active concert or participation cannot be either, because the decree has not been violated. The reason for this is clear: '. . . for it is not the act described which the decree may forbid, but only that act when the defendant does it.' "

It should be noted that on October 7, 1963, when Petitioners were cited for contempt, none of the defendants in Jefferson Bank v. Curtis et al. were accused of violating the injunction on either of those two days. It is true that eight persons plus their attorney were cited on August 30, but there was no connection between the two cases and no complicity was alleged. The trial court in its Findings

of Fact and Judgment, ruled that petitioners acted in concert with Curtis et al. This ruling was made even though all the evidence showed that these petitioners acted independently of Curtis et al. and at different times. There were no allegations of this nature contained in the notice read to petitioners (Tr. G, 8h, 8i, 8j). In its Findings of Fact and Judgment the Court found that each petitioner, ". . . acted in concert and participation with, and aided and abetted one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Co. v. Robert Curtis et al. . . ."

Petitioners were found guilty of aiding and abetting violations of the restraining order but were never accused of doing so. Petitioners did not have an opportunity to defend against that specific finding of fact since it was not alleged. Even in the Finding of Fact and Judgment the petitioners were not informed of the name or the identity of the persons they are supposed to have aided and abetted or the manner in which the enjoined persons acted in concert with them. Nor is any explanation given as to how these petitioners could be guilty of aiding and abetting when none of the persons bound by the injunction was accused of violating the injunction on October 7.

The right to know what one is charged with applies to cases of criminal contempt; therefore an alleged contemnor is entitled to a notice which fairly and fully informs him of the specific acts of contempt which he is charged. G. v. Souder, Mo. App., 305 S. W. 2d 883; U. S. v. Cruikshank, 92 U. S. 542; Gompers v. Buck's Stove, etc., Co., 221 U. S. 446.

A notice in criminal contempt is insufficent as a matter of law if it does not allege how the alleged contemnor acted in concert and participated with the enjoined defendants in violation of the restraining order. **United States v. Dean Rubber Mfg. Co.**, 71 F. Supp. 96, these

standards of due process apply to the states. In re Oliver, 222 U. S. 257; In re Green, 369 U. S. 689.

In the instant case the petitioners were never accused of acting in concert with any of the defendants (individuals or members of the class) therefore the notice was fatally defective and the procedures used to convict these petitioners violated their rights to due process under the 14th Amendment of the Federal Constitution.

There was no evidence that these petitioners were in any way connected to any of the named defendants. The only evidence presented was that there was a picket line in process at the time these petitioners entered the bank, and some persons in the picket line were carring CORE signs—there was also evidence that Lucien Richards and Rev. Charles Perkins (named defendants in the injunction) were in the picket line, but no evidence was introduced that would support a finding of conspiracy or collusion with any named defendant. To convict without evidence in support thereof violated due process under the 14th Amendment. Thompson v. City of Louisville, 80 S. Ct. 624.

CONCLUSION.

It is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.